trust under such a trust he is thereby to be considered too untrustworthy to act as trustee, nor has such a view been taken. *Cf. Nichols* v. *Eaton*, 91 U. S. 716.

TRUSTS — CREATION AND VALIDITY — MERITORIOUS CONSIDERATION FOR EXECUTORY PROMISE. — The testator executed an instrument, referred to by the court as a deed of trust, wherein he promised, for himself and his executors, to pay to the plaintiff, his wife, from whom he was living apart, a fixed annuity during her lifetime. As security for the performance of his promise he conveyed certain property in trust for her. This property proved insufficient for the maintenance of the annuity, but the testator supplied the deficit while he lived. The plaintiff sought to have the trust fund increased from the estate to an amount large enough to support the annuity. *Held*, that the estate is liable. *In re Hoffman's Estate*, 177 N. Y. Supp. 905 (Surr. Ct.).

The weight of American authority is that meritorious consideration is enough to turn an imperfect gift into a valid declaration of trust. See SCOTT, CASES ON TRUSTS, 151. But the law is fairly well settled that such consideration is not sufficient to support an executory promise. *Matter of James*, 146 N. Y. 78, 40 N. E. 876; *Landon* v. *Hutton*, 50 N. J. Eq. 500, 25 Atl. 953. *Contra*, *Crawford's Appeal*, 61 Pa. St. 52. Nor does the creation of a trust for the security of the promise seem to afford any reason for changing the rule when the security proves insufficient. Equity has gone far in turning an imperfect gift into a contract when substantial consideration has been given in form only. *Ferry* v. *Stephens*, 66 N. Y. 321. See Roscoe Pound, "Consideration in Equity," 13 ILL. L. REV. 667, 671. But here no consideration is mentioned. It would seem that the case could not be supported except on the theory that the testator declared a trust of all his property to pay the annuity. Such a trust, while possible, could be established only by strong evidence of intent. *Hickok* v. *Bunting*, 67 App. Div. 560, 73 N. Y. Supp. 967. It might be urged that the payment of the deficit by the testator during his life was such evidence; but this was nothing more than the performance of his promise. The creation of the trust fund is inconsistent with an intent to hold the rest of the property in trust. And the fact that the testator made no attempt to treat the remaining property as a trust *res* would seem to be conclusive. *Ambrosius* v. *Ambrosius*, 239 Fed. 473.

TRUSTS — INFANT TRUSTEE — COMPELLING EXECUTION OF TRUST. — A named her minor son, B, as beneficiary of her life insurance policy, upon trust, however, to pay her funeral expenses and to keep the excess. A died while B was still an infant and B made arrangements with an undertaker to conduct the funeral. B now seeks to avoid the payment of the undertaker's bill. *Held*, that the bill must be paid. *Amodei's Estate*, 76 Leg. Int. 733.

An infant may be a trustee. *Jevon* v. *Bush*, 1 Vern. 342. See 1 PERRY, TRUSTS, § 54. But because of his common-law disabilities, an infant is not liable *ex contractu*. See POLLOCK, CONTRACTS, Williston's ed., 59. The principal case must therefore go on some other ground than that the claimant is a creditor. It would not be doing violence to the intention of the settlor to say that the trust was for the benefit of any undertaker chosen by the trustee and that when chosen he would be the *cestui que trust*. See 18 HARV. L. REV. 529. Or it could be said that the personal representative of the settlor was the *cestui*, since, were it not for the trust, he would be liable for the reasonable funeral expenses of the deceased. *Patterson* v. *Patterson*, 59 N. Y. 574. In either case there would be the difficulty of compelling the infant to carry out the trust. It has been held that if an infant trustee makes a conveyance which he would have been bound to make upon coming of age, he cannot later disaffirm it. *Anon.* v. *Handcock*, 17 Ves. 383; *Elliott* v. *Horn*, 10 Ala. 348; *Starr* v. *Wright*,

20 Ohio St. 97. And a *cestui que trust* of a chose in action held in trust by an infant has been allowed to compel the obligor to pay directly to him. *Levin* v. *Ritz*, 17 N. Y. Misc. 737, 41 N. Y. Supp. 405. The principal case goes but a step beyond these cases. Nor is it objectionable, since under modern practice the same result could be obtained by removing the infant and appointing a new trustee.

VENDOR AND PURCHASER — REMEDIES OF VENDOR — EQUITABLE LIEN OF UNPAID VENDOR. — The plaintiff sold and conveyed land to the defendant, receiving a promissory note in part payment. He indorsed the note to a bank as collateral security for advances. Upon failure to pay the note when due, the bank sued the defendant as maker and the plaintiff as indorser and got judgment against each, which judgment remains unsatisfied. The plaintiff then filed the present bill praying a declaration that he has a lien upon the land conveyed and is entitled to maintain a *caveat* against the land until payment of the amount due on the note, and also for foreclosure and sale of the land. The bank was not made a party to the bill. *Held*, that the plaintiff is entitled to maintain a *caveat* against the land, but not to foreclose. *Denny* v. *Nozick*, 48 D. L. R. 310.

Despite apparent inconsistency with the policy of recording statutes and theoretical objections, there are still a limited number of jurisdictions where an unpaid vendor of land has an equitable lien on the land for the purchase price. *Mackreth* v. *Symmons*, 15 Ves. 329; *Wilson* v. *Plutus Mining Co.*, 174 Fed. 317. *Contra*, *Ahrend* v. *Odiorne*, 118 Mass. 261; *Kauffault* v. *Bower*, 7 S. & R. (Pa.) 64. See 2 JONES ON LIENS, § 1063. Jurisdictions allowing such a lien are in hopeless confusion in regard to who may enforce it. See 2 JONES ON LIENS, §§ 1092 *et seq.* Some consider it personal to the vendor, and neither allow the lien to follow the debt in equity nor permit him expressly to assign it. *Keith* v. *Horner*, 32 Ill. 524; *Hecht* v. *Spears*, 27 Ark. 229. Some permit assignment as collateral security for the vendor's debt but not otherwise. *Carlton* v. *Buckner*, 28 Ark. 66. Other jurisdictions allow assignment freely. *Sloan* v. *Campbell*, 71 Mo. 387; *Nichols* v. *Glover*, 41 Ind. 24. In such jurisdictions, payment to the transferee by the vendor as surety of course enables the latter to enforce the lien by subrogation. *Mathews* v. *Aiken*, 1 N. Y. 595; *Riggs* v. *Chapman*, 46 S. W. 692 (Ky.). However, even in jurisdictions restricting assignment, if the vendor is later compelled to pay as indorser, his lien revives. *Cotton* v. *McGehee*, 54 Miss. 510; *Hallock* v. *Smith*, 3 Barb. (N. Y.) 267. In any jurisdiction, therefore, which permits the lien at all, the grantor could enforce the lien after payment. Before payment, however, since the bank was not a party in the principal case, it seems clear that the vendor should not be granted foreclosure and sale on a theory of exoneration. But the decree as granted amounts to no more than maintaining the *status quo* until the debt should be paid, and as such would seem to be properly granted. See *Wolmershausen* v. *Gullick*, [1893] 2 Ch. 514.

WILLS — CONSTRUCTION — CONDITIONAL WILLS. — Before starting on a journey, the testator made a will providing, "in case of any serious accident, . . . I direct . . ." and therein left all his property to his aunt. The testator returned home safely. *Held*, that the will was not conditional. *In re Tinsley's Will*, 174 N. W. 4 (Iowa).

The validity of a will may depend upon the fulfillment of a condition. *Davis* v. *Davis*, 107 Miss. 245, 65 So. 241; *In the Goods of Porter*, L. R. 2 P. & D. 21. If the condition is plainly stated it will be enforced, whether precedent or subsequent in form. See 28 HARV. L. REV. 336. A recent New York decision to the contrary seems insupportable. *In re Steiner's Will*, 152 N. Y. Supp. 725. But if the words of the condition are not mandatory, the condition will not be